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Supreme Court of the United States

No. 623

WILLIAM RICKENBACKER,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

Petitioner will comment briefly on the arguments advanced in the Government's Brief.

1. Petitioner's Reason No. 1; Government's "2." The constitutional validity of Government action must be shown by evidence. *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520; *Borden's Farm Products* v. *Baldwin*; 293 U. S. 194, 209; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 548-549. There was no evidence showing the "connective reasoning," *Watkins* v. *United States*, 354 U. S. 178, 215, between whatever necessity existed and the inquiries directed at petitioner.

2. Petitioner's Reason No. 2; Government's "3." The Government's Brief impliedly concedes that petitioner was the only person prosecuted for refusing to answer the housing questionnaire; the Brief claims that the number of other persons so refusing was "small" (Director Burgess said "what we call small", 36a, out of 16,000,000 people) and once more fails to give any approximation of the number of those who, like petitioner, were "adamant." Moreover, it is unrealistic under the circumstances to say that petitioner was singled out because he was adamant; he was singled out because he forcefully expressed the reasons why he was adamant.

3. Petitioner's Reason No. 3; Government's "1(a)." The Government says 13 USC § 141 authorized this census. True, but the question is, did § 221(a) authorize this prosecution? Petitioner contends that this census is like a number of censuses and surveys authorized by Title 13, respecting which there are no criminal penalties, e.g., the unemployment census (63a), and the group of censuses provided by schedule III of chapter 5 of Title 13. (Actually 13 USC § 222 provides the criminal penalties applicable to the housing census; it has never been suggested that petitioner violated that section.)

4. Petitioner's Reason No. 4; Government's "1." The Government now says § 221(a) requires answers in writing, apparently recognizing that only on this construction is there evidence to sustain the present conviction. In the Court of Appeals the Government acquiesced in petitioner's argument that the statute only required oral answers, reasoning that (a) statutes requiring written answers expressly say so, e.g., Rule 33; and (b) there are and have been during the currency of the statute (since the census of 1870) many illiterate and non-English speaking residents of the United States.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

C. DICKERMAN WILLIAMS,
Counsel for Petitioner,
20 Exchange Place,
New York 5, N. Y.